

**M.P.S. CONCRETE SOLUTIONS LIMITED  
STANDARD CONDITIONS OF SALE**

**1. DEFINITIONS**

In these Conditions:

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Buyer** means the person agreeing to purchase the Goods and/or Services from the Company;

**Buyer Default** means any act or omission by the Buyer or failure by the Buyer to perform its obligations in accordance with the Contract and these Conditions;

**Company** means M.P.S. Concrete Solutions Limited, registered in England and Wales with company number 08669050 and having its registered office address at Wellington Way, The Airfield, Bourn, Cambridge, England, CB23 2TQ;

**Company Materials** means any materials, equipment, documents and other property of the Company;

**Conditions** means the standard terms and conditions of sale set out in this document and any variation to them which is otherwise agreed in accordance with these Conditions;

**Confidential Information** has the meaning given in clause 15.1;

**Contract** means the agreement between the Company and the Buyer for the sale and purchase of the Goods and/or Services in accordance with these Conditions;

**Data Protection Legislation** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

**Deliverables** means the deliverables set out in the Order;

**Delivery Address** means the address specified in the Order;

**Delivery Date** means the date on which it is intended that the Company shall deliver the Goods (the expression “deliver” being interpreted in accordance with clause 4.1), as specified in the Order;

**Dispute and Dispute Notice** have the meanings given in clause 16.1;

**Goods and/or Services** means the goods and/or services (including the Deliverables) to be supplied to the Buyer under the Contract as described in the Order and/or the Specification; and references to **Goods** and **Services** shall be construed accordingly;

**Order** means the Buyer’s order for the Goods and/or Services, as set out in the Buyer’s written acceptance of the Company’s quotation, the Buyer’s purchase or sub-contract order form, and any other documents, or parts thereof as may be agreed by the parties. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order listed within this definition.

**Price** means the price of the Goods and/or Services specified in the Order;

**Specification** means any specification for the Goods and/or Services, including any related plans and drawings, that are agreed in writing by the Company and the Buyer; and

**UK Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

## **2. BASIS OF CONTRACT**

- 2.1. These Conditions apply to every Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any amendment or variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company.
- 2.2. The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into force. The Company is under no obligation to accept any Order, and no Order shall be regarded as having been accepted by the Company unless accepted in accordance with this clause 2.3.
- 2.4. Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5. A quotation for the Goods and/or Services given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue. The Company shall be entitled to withdraw a quotation at any time and any quotation shall no longer be valid if a sub-contractor or supplier of the Company has changed its charges.
- 2.6. The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

## **3. SAMPLING AND TESTING**

The attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974 (as amended). The Company gives notice to the Buyer that the Company has available information (including chemical safety data sheets) and product literature concerning the conditions necessary to ensure that, as far as is reasonably practicable, the Goods supplied will be safe and without risks to health when properly used, handled, processed, stored or transported by a person at work. If the Buyer is not already in possession of such literature or requires any information or advice in connection with the safe use of the Goods at work the Buyer should immediately contact the Company.

## **4. DELIVERY OF GOODS/SUPPLY OF SERVICES**

- 4.1. Delivery of the Goods shall be effected either by: (a) the Company delivering the Goods or having them delivered to the Buyer at the Delivery Address; or (b) failing agreement, the Buyer collecting the Goods from the Company's premises after the Company has notified the Buyer in writing that the Goods are available for collection.

- 4.2. Where the delivery method in clause 4.1(a) is used, the Buyer shall be responsible for unloading the Goods at the Delivery Address.
- 4.3. Where delivery of Goods is to take place at the Company's premises, the Buyer shall be responsible for loading the Goods onto its collection vehicle. The Buyer must act in accordance with the operational procedures at the collection site and follow all instructions given by the Company's duly authorised representative. The Company will not be liable for loss or damage to the Buyer's property (where applicable) or, in the absence of negligence on the part of the Company, for any personal injury occasioned to the Buyer, its representative or any third party not under the direction or control of the Company which results from the failure of the Buyer to comply with the Company's site operational procedures or the Company's instructions. Neither shall the Company be liable, in any way, for any loss of or damage to the Goods resulting from the condition of the collection vehicle, or, following loading, if the Buyer, its representative, or any third party not under the direction or control of the Company makes any change to the manner in which the Goods are loaded, stacked, or distributed by the Buyer within the collection vehicle.
- 4.4. Delivery of the Goods shall be completed on the completion of either: (a) unloading of the Goods where the delivery method in clause 4.1 (a) is used; or (b) loading of the Goods where the delivery method in clause 4.1 (b) is used.
- 4.5. The Company shall use reasonable endeavours to deliver the Goods on the Delivery Date(s). However time for the delivery shall not be of the essence and the Company shall have no liability in respect of late delivery of the Goods or any instalment of the Goods, and neither shall any such delay entitle the Buyer to terminate or rescind the Contract, save to the extent that the delay is the result of any failure by the Company to comply with its obligation in the first sentence of this clause 4.5 where such failure constitutes a material breach of the Contract.
- 4.6. If the Company delivers up to and including 5% more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of written notice from the Buyer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.7. If the Buyer fails to take or accept delivery of the Goods (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
  - (a) treat the Contract as discharged;
  - (b) store the Goods until actual delivery and charge the Buyer for all related costs and expenses incurred (including insurance), risk in the Goods passing to the Buyer on the original Delivery Date; or
  - (c) sell the Goods at the best price readily obtainable or otherwise dispose of part or all of the Goods and (after deducting all reasonable storage and sale expenses) charge the Buyer the shortfall below the price of the Goods.
- 4.8. The Company may deliver the Goods and/or supply the Services by instalments which shall be invoiced and paid for separately. Any delay in delivery and/or meeting a performance date in an instalment of Goods and/or the supply of Services shall not entitle the Buyer to cancel any other instalment. Equally, any defect in an instalment of Goods shall not entitle the Buyer to cancel any other instalment.

## **5. RISK AND TITLE TO GOODS**

- 5.1. The risk in the Goods shall pass to the Buyer on completion of delivery in accordance with the Contract.
- 5.2. Where the Contract is solely for the provision of Goods, title to the Goods shall remain with the Company until the Company has received payment in full in cleared funds for the Goods.
- 5.3. Where the Contract is for the provision of Goods and Services, title to the Goods shall remain with the Company until the Company has received payment in full in cleared funds for the Goods and Services.
- 5.4. Until title to the Goods has passed to the Buyer, the Buyer shall, where applicable:
  - (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition;
  - (d) notify the Company immediately if it becomes subject to any of the events listed in clause 17.2(a) or (b); and
  - (e) give the Company such information relating to the Goods as the Company may require from time to time.
- 5.5. If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 17.12(a) or (b), then, without limiting any other right or remedy the Company may at any time:
  - (a) require the Buyer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product; and
  - (b) if the Buyer fails to carry out the obligation in clause 5.5(a) promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## **6. SUPPLY OF SERVICES**

- 6.1. The Company shall supply the Services to the Buyer in accordance with the Specification in all material respects.
- 6.2. The Company shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 6.3. The Company warrants to the Buyer that any Services will be provided using reasonable care and skill.

## **7. BUYER'S OBLIGATIONS**

- 7.1. The Buyer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Company in all matters relating to the Services;
- (c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises as reasonably required by the Company to provide the Services;
- (d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain any necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (f) keep all Company Materials at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

7.2. If the Company's performance of any of its obligations under the Contract is prevented or delayed by a Buyer Default:

- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Company's performance of any such obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

## **8. PRICE**

8.1. The Price for the Goods and/or Services shall be as stated in the Order, and unless otherwise so stated shall be exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice).

8.2. The Company reserves the right to increase the price of the Goods and/or Services at any time to reflect any increase in cost due to:

- (a) any factor beyond the Company's control including, but not limited to, foreign exchange fluctuations, increases in taxes, duties and impositions, and increases in labour, materials and other manufacturing costs, all of whatever kind and howsoever arising;
- (b) any request by the Buyer to change the Delivery Date, quantities or types of Goods ordered/Services provided, or the Specification; or
- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

## **9. PAYMENT**

- 9.1. In respect of the Goods, the Company shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Buyer on completion of the Services. Each invoice shall quote the number of the relevant Order. Where Goods and/or Services are delivered and/or supplied in instalments, the Company may, at its discretion, invoice the Buyer on or at any time after completion of each such individual instalment in accordance with clause 4.8.
- 9.2. The Buyer shall pay each invoice submitted by the Company in full and in cleared funds within 30 days of the date of the invoice (credit accounts). Payment shall be made to the bank account nominated in writing by the Company. Time of payment shall be of the essence of the Contract.
- 9.3. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction, retention, discount or withholding (except where required by law).
- 9.4. If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then, without limiting the Company's remedies under clause 17 the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Buyer shall pay the interest together with the overdue amount.

## **10. QUALITY AND FITNESS FOR PURPOSE**

10.1. The Company warrants that at the time of delivery, the Goods will:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

10.2. Subject to clause 10.3, if:

- (a) the Buyer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 10.1;
- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by the Company) returns such Goods, where practicable, to the Company's place of business at the Buyer's cost,

the Company shall, at its option, repair or replace the defective Goods or refund the price of the defective Goods.

10.3. The Company shall not be liable for failure of the Goods to comply with the warranty set out in clause 10.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 10.2;

- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and/or maintenance of the Goods;
- (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (d) the Goods differ from the Specification as a result of changes made by the Company to ensure that they comply with applicable statutory or regulatory requirements; or
- (e) the Buyer adds to, alters or repairs the Goods (other than as directed by the Company).

10.4. Except as provided in this clause 10, the Company shall have no liability to the Buyer in respect of the failure of the Goods to comply with the warranty set out in clause 10.1.

10.5. Any terms, warranties and conditions implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

## **11. LIMITATION OF LIABILITY**

11.1. Subject to clause 11.2:

- (a) the Company's total liability to the Buyer in connection with any and all claims arising in relation to any Goods or Services shall not exceed the Price of those Goods or Services;
- (b) under no circumstances shall the Company be liable to the Buyer for loss of profit, loss of revenue, loss of bargain, loss of business or contract, diminution of goodwill or for any other economic loss (whether direct, indirect or consequential), or for any indirect or consequential loss or damage of any kind; and
- (c) save as expressly provided in the Contract, all warranties, conditions or other terms implied by statute or common law in relation to the sale of goods are hereby excluded and the Company makes no warranty as to the fitness of the Goods for any particular purpose even if that purpose is stated in the Contract.

11.2. Nothing in the Contract shall limit or exclude the liability of the Company for:

- (a) death or personal injury resulting from the negligence of the Company;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.3. Unless the Buyer notifies the Company that it intends to make a claim in respect of an event within the notice period, the Company shall have no liability for that event. The notice period for an event shall start on the day on which the Buyer became, or ought reasonably to have become, aware of the event having occurred and shall expire twelve months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **12. INTELLECTUAL PROPERTY**

- 12.1. To the extent that any Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause 12.1 shall survive termination of the Contract.
- 12.2. All Intellectual Property Rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by the Buyer) shall be owned by the Company.
- 12.3. The Company grants to the Buyer, or shall procure the direct grant to the Buyer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Buyer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 12.4. The Buyer shall not sub-license, assign or otherwise transfer the rights granted by clause 12.3.
- 12.5. The Buyer grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Buyer to the Company for the term of the Contract for the purpose of providing the Services to the Buyer.

### **13. DATA PROTECTION**

- 13.1. Where the Buyer is a business (and not an individual), the Company will be required to process the personal data of certain individuals employed by the Buyer (including but not limited to the name of the Company's point of contact for the Buyer) in order to carry out its obligations under the Contract. Where the Buyer is a business, clauses 13.2 to 13.5 shall apply.
- 13.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 13, Applicable Laws means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 13.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the controller and the Company is the processor.
- 13.4. Without prejudice to the generality of clause 13.2, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data of any relevant individuals to the Company for the duration and purposes of the Contract.
- 13.5. Without prejudice to the generality of clause 13.2, the Company shall, in relation to any personal data processed in connection with the performance by the Company of its obligations under the Contract:
  - (a) process that personal data only on the documented written instructions of the Buyer unless the Company is required by Applicable Laws to otherwise process that personal data. Where the Company is relying on Applicable Laws as the basis for processing personal data, the Company shall promptly notify the Buyer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Buyer;

- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
  - (i) the Buyer or the Company has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) the Company complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the personal data;
- (e) assist the Buyer, at the Buyer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Buyer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Buyer, delete or return personal data and copies thereof to the Buyer on termination of the Contract unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with clauses 13.2 to 13.5 and immediately inform the Buyer if, in the opinion of the Company, an instruction infringes the Data Protection Legislation.

13.6. Where the Buyer is an individual (and not a business), the Company is required under Data Protection Legislation to provide the Buyer with certain privacy information regarding the processing of the Buyer's personal data. This information is provided in [LINK TO PRIVACY NOTICE].

#### **14. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## 15. CONFIDENTIALITY

15.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party (**Confidential Information**), except as permitted by clause 15.2.

15.2. Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3. Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

## 16. DISPUTE RESOLUTION

16.1. If a dispute arises out of or in connection with this agreement (a **Dispute**), the parties shall follow the procedure set out in this clause 16:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a **Dispute Notice**) together with relevant supporting documents. On service of the Dispute Notice, the Managing Director of the Buyer and the Managing Director of the Company shall attempt in good faith to resolve the Dispute; and
- (b) if the respective Managing Directors of the Buyer and the Company are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to arbitration.

16.2. The arbitrator shall be appointed by agreement between the Company and the Buyer or, failing agreement within 14 days of either of them requesting such agreement, by the president for the time being of the Chartered Institute of Arbitrators.

16.3. The procedure to be followed shall be agreed by the Company and the Buyer, or, in default of an agreement, shall be decided by the arbitrator.

16.4. If either the Company or the Buyer defaults in respect of any procedural order made by the arbitrator, the parties agree that the arbitrator shall have the power to proceed with the arbitration in the absence of that party and deliver his award. The parties agree that the decision of the arbitrator shall be final and binding on the Company and the Buyer and shall not be subject to appeal or judicial review.

## 17. TERMINATION AND SUSPENSION

- 17.1. The Company shall have the right to terminate the Contract by providing the Buyer with not less than one month's notice at any time without prejudice to the Company's other rights and remedies.
- 17.2. Without prejudice to any other rights or remedies of the Company, the Company may by giving written notice to the Buyer terminate the Contract forthwith if: (a) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, (b) the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business, or the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy or (c) the Buyer shall be in material breach of any terms of the Contract and (if such breach is remediable) the Buyer has failed to remedy that breach within 30 days after receipt of notice in writing to do so.
- 17.3. Without prejudice to any other rights or remedies of the Buyer, the Buyer may by giving written notice to the Company terminate the Contract forthwith if: (a) the Company takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, (b) the Company suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business, or the Company's financial position deteriorates to such an extent that in the Buyer's opinion the Company's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy or (c) the Company shall be in material breach of any terms of the Contract and (if such breach is remediable) the Company has failed to remedy that breach within 30 days after receipt of notice in writing to do so.
- 17.4. Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Company if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 17.2 (a) or (b), or the Company reasonably believes that the Buyer is about to become subject to any of them.

## **18. CONSEQUENCES OF TERMINATION**

### **18.1. On termination of the Contract:**

- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt; and
- (b) the Buyer shall return all of the Company Materials and any Deliverables or Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

### **18.2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.**

18.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 19. GENERAL

### 19.1. Assignment and other dealings

- (a) the Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract; and
- (b) the Buyer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

19.2. **Notices.** Any notice to be given under this Contract shall be in writing and shall be delivered personally, or by pre-paid registered or recorded delivery, to the other party at its address as set out in the Contract or as may otherwise be specified by such party by notice in writing to the other party. Any notice shall be deemed to have been duly received: (a) if delivered personally, when left at the relevant address; or (b) if delivered by pre-paid registered or recorded postage, 48 hours after posting. A notice given under this agreement is not valid if sent by email.

19.3. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.4. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### 19.5. Entire agreement

- (a) The Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

19.6. **Third Party Rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19.7. **Severance.** If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

- 19.8. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 19.9. **Interpretation.** References to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.
- 19.10. **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 19.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.